

ANDOVER BOARD OF HEALTH

Minutes

September 15, 2008, 6 P.M.

1st Floor Conference Room

36 Bartlet Street

The Board of Health meeting was called to order at 6:00 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Margaret N. Kruse, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- **August 18, 2008**

Motion by Ms. Martin, seconded by Dr. Miller to approve the Minutes of the Meeting of August 18, 2008. Unanimous approval.

II. Appointments & Hearings

- **6 p.m. – Angelo Petrosino for Pine Forest Park Subdivision – Revised Plans** – Present representing the subdivision were Angelo Petrosino, Applicant, Tom Mullen, Attorney, Doug Miller, Engineer, and Carmine Petrosino. Present representing the Town of Andover was Mr. Thomas J. Urbelis, Town Counsel. Mr. Carbone explained that this subdivision plan was filed years ago. The land abuts North Reading and the Applicant had requested an Intermunicipal Agreement between North Reading and the Town of Andover to use the North Reading water supply; however, the Andover Planning Board denied the subdivision. The Applicant took the Planning Board to Court because of its denial of the subdivision, and the court has ordered a partial remand that includes the Board of Health review and approval of the use of the wells for the subdivision's water supply. Per the August 18, 2008 Board of Health Meeting, a company was hired for a Peer Review, (ESS Group, Inc.) paid for by the developer, to determine if the water supply is adequate.

Mr. Carbone explained that the Well Water System Requirements are very specific, and that some of the requirements had not been met. There was no testing of organic compounds, and the Applicant did not submit alternative treatment systems for the water quality issues detected. Other issues were missing soil test logs, and documentation showing the wells were pumped simultaneously for 48 hours. Lot 11 showed a high level of coliform, and when it was retested, the level decreased considerably; however, the Board requested more testing to confirm results. The Peer Review stated that more information was needed before a recommendation could be given to the Board of Health.

Mr. Petrosino testified that the 48 hour test was done and showed the Board a copy of the soil test results. However, the hydro report did not show the 48 hour test and the soil testing document was not included in the Pine Forest Park Definitive Subdivision submission. Attorney Mullen stressed the importance of a vote tonight because the remand states that a decision has to be made by the Board of Health by September 19, 2008. Attorney Mullen

asked that the reasons be stated if the subdivision was disapproved, so that he could show the judge that they can do what is required for approval by the Board of Health at a later date. Attorney Urbelis recommended the Board deny the subdivision because the Board does not have all the information it required from the Applicant.

Motion by Dr. Miller to disapprove the Pine Forest Park Definitive Subdivision, seconded by Ms. Kruse for discussion purposes.

Ms. Martin stated that the remand stated exactly what the applicant needed to do as far as the Well Water System Regulations. The copies of the soil testing were only shown to the Board this evening at the Board of Health Meeting. When the applicant hired the person to do the well testing, there was no documentation for certain things that were required. Ms. Kruse pointed out that if the Board of Health had received all the documentation needed, then it would have been better prepared to make a decision for approval or disapproval.

Motion by Ms. Kruse, seconded by Dr. Miller to amend the previous Motion to disapprove to include the reasons for the disapproval . Unanimous approval to amend.

Motion by Dr. Miller, seconded by Ms. Kruse to disapprove the Definitive Subdivision “Pine Forest Park, Well Location Exhibit Plan”, dated July, 2008. Applicant: Angelo Petrosino, Engineer: Douglas E. Miller, R.P.E, and state the reasons for denial as follows:

- 1. The original coliform test for the well on Lot 11 indicated the presence of coliform (BOH Regulation 6.04).*
- 2. The wells for Lots 11 and 6 fail to meet certain secondary contaminant standards, including color, threshold odor, sodium, and chlorides (BOH Regulation 6.04).*
- 3. The applicant has failed to propose alternative treatment systems to meet the failed standards (BOH Regulation 6.05).*
- 4. The applicant has failed to ensure that at least one well has been tested for organic compounds (BOH Regulation 7.02).*
- 5. The applicant has failed to submit documentation that all wells were pumped simultaneously for 48 hours (BOH Regulation 7.02).*
- 6. The applicant has failed to submit soil test logs for each lot as required by the remand order.*

Unanimous disapproval

- **6:30 p.m. – Yee Yang for Thai Sweet Basil – Show Cause Hearing to Revoke Food Service Permit** – Present were Mr. Yee Yang, and Kenny Yong. Mr. Carbone updated the Board on what led to the Show Cause Hearing. On 9/8/08 during a routine inspection, Mr. Carbone issued an Emergency Closure Order because of the condition of the kitchen, as shown to the Board in pictures. This was considered an immediate health hazard, and the restaurant was closed for repairs and cleanup. Mr. Carbone brought Mr. Yang before the Board because there have been similar inspections in the past with repeat violations such as grease buildup, poor housekeeping practices, lack of sanitizer setup, and all around dirty and poor conditions. After the cleanup, re-inspection

was conducted on Thursday, 9/11/08 to Mr. Carbone's satisfaction with the exception that the hood cleaning company did not clean beyond the filters. Mr. Carbone allowed the restaurant to reopen on 9/11/08 with the condition that the hood cleaning company come back that weekend to finish their cleanup. Fire Prevention Officer, Todd Pomerleau, was satisfied with the cleanup as well.

Mr. Yang and Mr. Wong showed the Board before and after pictures so that it could see the difference after the cleanup. The Board discussed concerns because cleanliness has been a reoccurring problem and that part of the problem seems to be unclean work habits, lack of supervisory personnel, as well as the grease buildup issues. The Board stressed the need for someone to be in charge at all times, and if his niece who is considered the Manager is not there, Mr. Yong or someone else must be placed in charge. Mr. Yong stated that he intends to get more employees ServeSafe Certified, he will put up more signage concerning cleanup procedures, and will be having the hood cleaning company come in every three months instead of twice a year. The Board strictly stressed the need for the reoccurring violations to be dealt with immediately. Mr. Carbone suggested the Board vote to have Mr. Yang hire a private inspection company that can submit inspection reports on a monthly basis within 24 hours of the inspection. After six months Mr. Yang would then appear again in front of the Board for a status update.

Motion by Dr. Miller, seconded by Ms. Martin, not to suspend or revoke the Permit to Operate a Food Establishment for Thai Sweet Basil because Mr. Yang agrees to the following conditions as follows:

- 1. You shall employ at your own expense a private inspection company to inspect your establishment on a monthly basis, with inspection reports being submitted to the Health Division within 24 hours of completion of the inspection. It is expected that this company will also help you train your staff.*
- 2. This matter will be placed on the Board's agenda in six months for a status update, at which time the Board will consider amending this decision based on those reports.*

Unanimous Approval

- **7:00 p.m. – George Dukas for Lantern Brunch – Repeat Violations -** Mr. Carbone explained that last year a Show Cause Hearing was held and the Board had required that Mr. Dukas create a written checklist for proper close-up and cleaning procedures and have another employee become a Certified Food Handler. That Certified Food Handler would be responsible for make monthly self-inspection reports to the Board of Health. Also, if there are any more instances of the three reoccurring violations, the Board would require him to hire a private inspector to conduct the monthly inspections. Mr. Carbone stated that none of the requirements had been met, resulting in Mr. Dukas' appearance before the Board tonight. Mr. Carbone said there are still some food handling issues witnessed at an inspection, such as chicken being cooled outside of the refrigeration unit, and a sanitizing cloth left on the bar. Mr. Dukas told the Board that he did make a checklist, but never posted it, and was not doing the inspection reports because he never received the self-inspection document. He now has an employee, Kathleen Healey, who is a Certified Food Handler, will post his checklist, and install more hand sanitizing stations. Mr. Carbone will

send Mr. Dukas a self-inspection report to be filled out and submitted to the Board by Ms. Healey on a monthly basis. Mr. Carbone will inspect the establishment after six months and the Board will meet again for a status update.

III. Discussion

- **Elimination of Burial Permit Fee** –Mr. Carbone informed the Board that the Burial Fee has been eliminated because a court case in Fall River determined the fee was an illegal tax and did not benefit the person paying the fee. Therefore, Town Counsel told the Board to stop charging a fee for the Burial Permit. The elimination of that fee results in a loss of approximately \$3000.00 per year in revenue.

IV. Old Business

- **2 Carriage Hill Road Septic System** – Mr. Carbone updated the Board on the situation with the failing septic system on 2 Carriage Hill Road. The problem was brought to the Board's attention when a neighbor saw a Port-a-Potty in their garage, and then witnessed Mrs. Wolfe's son and daughter put something into a hole in the yard. The washing machine water was being pumped into the yard, and the septic system was in failure as indicated in previous pumping records submitted to the Health Division. The pumping of the washing machine water has ceased, so the system is not overflowing to the ground surface at this time.

After careful consideration at the August 18th, 2008, Board of Health Meeting, the Board decided to take court action against Mrs. Wolfe because she was refusing to fix the failed system and rejected a Local Upgrade Approval that was granted by the Board. Mr. Carbone and Mr. Stapczynski, Town Manager, appeared before the Board of Selectmen to receive permission use Town Counsel to take Mrs. Wolfe to court to file legal action, but the Board of Selectmen has denied the request.

The Board discussed its inability to enforce public health laws if the Board of Selectmen denies the use of Town Counsel when there is a clear violation of Title V. The Board discussed four options: 1) do nothing at all, 2) talk to the Board of Selectmen again to ask them to reconsider its decision, 3) take Mrs. Wolfe to Housing Court, or 4) condemn the house.

After discussion, the Board decided to request an official meeting with the Board of Selectmen to discuss the code violations at 2 Carriage Hill Road. The Board hopes to make the Board of Selectmen understand the implications of letting this situation continue and how its decision affects the Board of Health's ability to enforce its public health laws.

V. Subdivision Definitive Plans

- **340 Salem Street** - Mr. Carbone explained to the Board that the applicant wants to change one existing lot to two. There is ample room for a new septic system on the new and existing lots. The existing dwelling will remain the same and the roadway out of the property will become a private driveway. Mr. Carbone recommended approval.

Motion by Dr. Miller, seconded by Ms. Martin to approve the Subdivision Definite Plans for 340 Salem Street with the following conditions:

- 1. Any modification, amendment, or change to the Definitive Plan of 340 Salem Street shall be submitted as a new or modified Definitive Plan in accordance with the provisions of MGL Chapter 41, §81U.*
- 2. Subject to Conservation Commission approval of the Definitive Plan of 340 Salem Street by Order of Conditions or Negative Determination.*

Unanimous Approval

VI. Plan Review

A. D.W.R.P. Variances/Local Upgrade Approvals –

- N/A

B. B.S.I.P. – Ratify

Ms. Martin moved to ratify, seconded by Dr. Miller. The Board voted unanimously to ratify the following BSIP's:

4	Charlotte Drive	TM	140	TL	2B
245	Holt Road	TM	61	TL	8C
15	Pinecrest Road	TM	62	TL	16
107	Salem Street	TM	42	TL	8
460	South Main Street	TM	63	TL	27
31	Suncrest Road	TM	62	TL	14
2	West Knoll Road	TM	59	TL	6

Unanimous approval.

C. S.S.A.P – Recommend Approval:

Ms. Martin moved to approve, seconded by Ms. Kruse. The Board voted unanimously to approve the following SSAP's:

4	Charlotte Drive	TM	140	TL	2B
245	Holt Road	TM	61	TL	8C
15	Pinecrest Road	TM	62	TL	16
460	South Main Street	TM	63	TL	27
31	Suncrest Road	TM	62	TL	14

Unanimous approval.

D. S.S.U.P.– Recommend Approval:

- N/A

E. B.S.R.P. – Recommend Approval:

Ms. Martin moved to approve, seconded by Ms. Kruse. The Board voted unanimously to approve the following BSRP:

- 1 St. Augustine Lane

Unanimous approval.

VII. Staff Reports

A. Director's Report:

- **Statewide Cancer Results** – Mr. Carbone stated that the incidence of melanoma in females remains high. Prostate cancer rates in males are also high. He would like to have another Student Project completed concerning melanoma. He would like to see a display board showing how to protect your skin from sun exposure. Also, Mr. Carbone told the Board that the Health Division sets up a table at the Public Safety Center in October and was planning on putting some pamphlets out concerning skin cancer.
- **Tobacco Control Information** – The Tobacco Control Report was for informational purposes only.
- **38 Michael Way** – Mr. Carbone informed the Board that this was another hoarding case. Dan Tremblay, R.S., Health Agent, attempted to contact the homeowner after the Fire and Police Departments responded to a “well being” check and found that the home was filled with clutter and debris. Mr. Tremblay had dealt with the homeowner in the past concerning an animal issue at another home on Osgood Street. However, the house on Michael Way has other tenants and the hoarding issue has a direct effect on the three other families that are in the other units because several means of egress are blocked. So far the homeowner has only been contacted by phone. Mr. Carbone has sent a letter via Certified Mail and will continue to follow-up.
- **185 Elm Street** – Mr. Carbone explained to the Board that the homeowner, who has hoarding issues, had a fire in her kitchen. She now has to clean the home before any repair work can be done. She is living in a safe place temporarily, but is in a difficult situation financially. She has visited the Senior Center and Elder Services of the Merrimack Valley to try to get some help. Mr. Carbone will continue to monitor her situation.

- **Dylan's Restaurant** – Mr. Carbone explained that he visited Dylan's Restaurant at the beginning of September because of serious repeat violations that were found when Health Agent, Patricia Crafts, conducted a routine inspection. Mr. Carbone sent the restaurant a letter stating all the violations, and informing Dylan's that the visit he made was to be considered an Administrative Hearing.
- **Important Dates:**
 - September 24th @ 7 p.m. – Watershed Advisory Committee
 - October 2nd @ 10:30a.m. EDS Awareness Training
 - October 6th @ 6 p.m. – BOH Meeting
 - October 29th – 30th – MHOA Conference
 - October 3rd @ 6 p.m. – BOH Meeting

B. Nurses' Report for August, 2008 – The Nurses' Report was for informational purposes only.

C. Inspectors' Reports for August, 2008 – The Inspectors' Reports were for informational purposes only.

VIII. Board Member Reports:

- **Leakage at Andover Condominiums - (In Correspondence)** - Ms. Martin asked about the Andover Condominium letter concerning leakage into an apartment from the apartment above. Mr. Carbone explained that there have been problems with the roof and drainage leakage coming inside from the outside, so he was not sure if the issue was with the dog urine that the tenant below referred to.
- **Loud Noise from Air Conditioning Unit at Doctors Park (In Correspondence)** – Mr. Carbone explained to the Board that the noise level was causing a nuisance because residents in the area were complaining that the noise was interrupting their sleep and was causing problems. The Town of Andover does not have a real comprehensive By-law concerning noise complaints. The air conditioning unit has now been shut off.

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kruse to adjourn at 8:40 p.m. Unanimous approval.